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QUESTION OF DIPLOMATIC ASYLUM

Report of the Secretary-General

CONTENTS

* A/10150.

CONTENTS (continued)

INTRODUCTION

1. By a letter dated 16 August 1974 (A/9704), Australia requested the inclusion in the agenda of the twenty-ninth session of the General Assembly of an item entitled "Diplomatic asylum". On the recommendation of the General Committee the General Assembly decided to include the item in the agenda and to allocate it to the Sixth Committee.

2. On 14 December 1974, following consideration of the item by the Sixth Committee, 1/ the General Assembly adopted resolution 3321 (XXIX), which reads as follows:

"Question of diplomatic asylum

"The General Assembly,

"Conscious of the fact that a number of States had granted diplomatic asylum and that several conventions on this subject have been concluded in Latin America,

"Considering that it is desirable to initiate preliminary studies on the humanitarian and other aspects of the question of diplomatic asylum,

"1. Invites Member States wishing to express their views on the question of diplomatic asylum to communicate those views to the Secretary-General not later than 30 June 1975;

"2. Requests the Secretary-General to prepare and circulate to Member States, before the thirtieth session of the General Assembly, a report containing an analysis of the question of diplomatic asylum, taking into account in particular:

(a) The texts of relevant international agreements;

(b) Relevant decisions of tribunals;

(c) The consideration of the question in intergovernmental organizations;

(d) Relevant studies made or being made by non-governmental bodies concerned with international law;

(e) Relevant views of qualified publicists;

"3. Decides to include in the provisional agenda of its thirtieth session an item entitled 'Report of the Secretary-General on the question of diplomatic asylum'."

1/ See Official Records of the General Assembly, Twenty-ninth Session, Annexes, agenda item 105, document A/9913.

This report was prepared in pursuance of the resolution reproduced above. consists of an introduction and two parts, the first of which contains the views ressed by Member States in accordance with operative paragraph 1 and the second report of the Secretary-General referred to in operative paragraph 2.

The first part of the report contains the views received from Governments at 2 September 1975. Views which reach the Secretariat after this date will be lished in addenda to this report.

In addition to a historical sketch, the second part contains five chapters responding to each of the five subparagraphs of operative paragraph 2 of the olution. 2/ Regarding subparagraph (c), reference was made to the work of the gue of Nations, the United Nations, the Organization of American States, the ncil of Europe and the Asian-African Legal Consultative Committee. The two last-tioned organizations confirmed that they had never dealt with the question of lomatic asylum.

As far as subparagraph (d) is concerned, the work of international -governmental bodies has been taken into consideration in the relevant chapter.

2/ It should be noted that a preliminary draft resolution submitted in the urse of the Sixth Committee's deliberations on the item by the delegation of stralia (document A/C.6/L.992) called for publishing in this report information ncerning the laws and practice of Member States with regard to diplomatic asylum. en introducing the draft resolution (A/C.6/L.998) from which resolution 3321 (XXIX) rived, the representative of Australia stated that, in order to reflect the views pressed in the course of the discussion in the Sixth Committee, and particularly the 1506th meeting, his delegation had deleted from the text the reference to the ws and practice of Member States.

I. VIEWS EXPRESSED BY MEMBER STATES PURSUANT TO OPERATIVE PARAGRAPH 1 OF GENERAL ASSEMBLY RESOLUTION 3321 (XXIX)

AFGHANISTAN

[Original: English]
[8 August 1975]

The Government of the Republic of Afghanistan is of the opinion that the nclusion of an international instrument on the question of diplomatic asylum will useful and it would therefore be desirable if a draft of such an instrument prepared by the authorities concerned of the United Nations and transmitted to mber States for their views and consideration. The Government of the Republic Afghanistan will, of course, give its careful consideration to such draft strument and would not fail to transmit its views with regard to its provisions.

ARGENTINA

[Original: Spanish]
[25 August 1975]

1. Diplomatic asylum is an old-established humanitarian institution, the essential purpose of which is to protect individuals from persecution in times of internal upheaval within States. This institution contributes to the development and expansion of humanitarian international law.

2. Diplomatic asylum developed in legal form in Latin America, where it has beer dealt with in a number of important international instruments. If such has not been the case in other regions of the world, it is not because application of the principles of asylum was unnecessary or irrelevant.

3. The study envisaged in General Assembly resolution 3321 (XXIX) will make it possible to formulate universally applicable rules constituting a common minimum accepted by all States in this matter, and may be helpful in adapting the institution to current circumstances.

4. The Argentine Republic is a party to the Treaty of Montevideo (1889) and a signatory of the Conventions of Havana (1928), Montevideo (1933 and 1939) and Caracas (1954) on diplomatic asylum.

5. The Argentine Republic practises diplomatic asylum liberally, along the lines laid down in the above-mentioned conventions.

AUSTRALIA

[Original: English]
[27 June 1975]

Introduction

This statement of views on the question of diplomatic asylum is made by the overnment of Australia in response to the invitation tendered by the eneral Assembly in resolution 3321 (XXIX) of 14 December 1974. This resolution as itself the outcome of an Australian initiative in placing the question of iplomatic asylum on the agenda of the twenty-ninth session. This initiative was imed at the reduction of differences between States about the applicable rinciples of a concept which is continuously relevant. Uncertainty about these rinciples can have detrimental consequences for friendly relations between States nd for their co-operation in solving problems of a humanitarian character. It is o be recalled that the resolution was adopted by the striking vote of 110 votes in avour, none against and 16 abstentions.

. Diplomatic Asylum

. Diplomatic asylum is deep-rooted in history. 3/ The abiding value of the onception is demonstrated by two events nearly forty years apart. During the ivil War in Spain some 10,000 people sought and obtained diplomatic asylum in) diplomatic missions in Madrid. The humanitarian importance of the refuge ius afforded has been generally acknowledged. But because the Spanish Government ? that time refused to recognize any right to grant asylum, safe conducts for the efugees were for long refused and diplomatic relations were placed under such

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3/ Acknowledgment of this was made in several important contributions to the ebate in the Sixth Committee in 1974. The delegate of Israel noted that the umanitarian colouration was a modern reflection of historic religious and legal octrine evolved by the ancient Hebrews in connexion with the concept of "cities ' refuge" and the sanctity of the altar (A/C.6/SR.1506, p. 8). The representative ' Ghana agreed with the representative of Israel's appreciation of the historical ackground of the institution of diplomatic asylum. In Ghana it had been customary r people to seek asylum in places of worship when their lives were in danger ./C.6/SR.1510, p. 14). The representative of Algeria referred to the Islamic aditions in this area (A/C.6/SR.1510, p. 19). The representative of Brazil ferred to the history of the tradition of asylum in Europe and then Latin America ./C.6/SR.1505, pp. 6-7). An account of the decline in Europe of the ancient actice of asylum associated with the belief in a higher law than that of the will ' the human sovereign was given by the French representative (A/C.6/SR.1510, p. 2).

strain that the matter was referred to the Council of the League of Nations. A situation of comparable dimensions developed in Chile in 1973 when some 8,000 people took refuge in some 25 diplomatic missions in Santiago. Because many of the States concerned were not or could not be parties to the conventions on diplomatic asylum operative between Latin American States, the situation was clouded by much uncertainty.

3. The question: regulation by international law

3. The question now is that of the regulation of diplomatic asylum by international law. For Latin American States, the matter is governed as between themselves by inter-American conventions and practice. For other States, the problem is one of determining the limits within which, and the conditions under which, such asylum may be granted. The task is one partly of identifying existing rules and partly of prescribing acceptable standards for the future.

4. Another way of looking at the matter is this: should the conception be left in its present uncertain condition to develop slowly and haphazardly through intermittent and individual State action? Or, on the other hand, should the international community recognize the imperfect state of the law and deliberately move towards its improvement? If the first course is preferred, the likelihood that excessive doubt and undue caution may lead to unnecessary human suffering and loss of life as a result of the refusal of diplomatic asylum. Moreover, in cases of compelling urgency, there is an added risk of diplomatic friction between the State granting asylum and the territorial State because of the lack of understanding between the two as to the conditions for, and the consequences of the grant of asylum. 4/ If, on the other hand, the second course is adopted there is a prospect that in the foreseeable future these unsatisfactory features can be eliminated or reduced.

4. Humanitarian considerations

5. In pressing for discussion of this question, the Government of Australia is moved by humanitarian considerations - considerations so relevant to the development and application of the law. There is no novelty in the pursuit by

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4/ The observations made in the Sixth Committee of the General Assembly in 1974 by the delegate of Sri Lanka may be recalled in this connexion. He noted that there was considerable variance in the practice of States and that an examination of the principles of law and practice relating to diplomatic asylum would help to dispel the uncertainty and confusion which prevailed in that regard (A/C.6/SR.1508, p. 7). Similarly, the delegate of Jordan observed that the granting of diplomatic asylum by some countries and not others had a negative effect on inter-State relations, since any mission taking such action might be regarded as hostile or as supporting the aims of the person granted asylum - thus laying itself open to blame by other States or by the State in which the mission was situated (A/C.6/SR.1506, p. 7).

General Assembly of humanitarian objectives. Witness its concern with self-determination, the ending of colonialism, the promotion of human rights and the development of the law of armed conflict. Moreover, in the field of political asylum - of which diplomatic asylum is one part as territorial asylum is the other - the General Assembly has demonstrated a particular concern. 5/

6. In the debates in the Sixth Committee of the General Assembly in 1974 (see A/C.6/SR.1504-1511), the essentially humanitarian purpose of the review of diplomatic asylum was universally recognized. For many this recognition was express; 6/ for others, it was implicit either in their stated support for the concept of diplomatic asylum or in their acceptance of the procedures proposed. Even those few States who opposed further discussion of the topic by the General Assembly did so on the ground, believed by Australia to be mistaken, tha discussion would not be to the advantage of those who might benefit from asylum But no voice was raised to deny the humanitarian role of diplomatic asylum. 7/ And it is consciousness of this fact - and of the general recognition of it 8/ - that justifies Australia in moving the General Assembly to continue its discussi of the matter.

7. This discussion must necessarily involve reference to a number of objectior advanced by States in the course of the Sixth Committee debate in 1974.

5. Irrelevance here of State sovereignty

8. The first objection is that the grant of diplomatic asylum is a derogation from the sovereignty of the territorial State. The same objection can, however,

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5/ The right of asylum was included by the International Law Commission at its first session in 1949 in the provisional list of topics selected for codification. In 1959 the General Assembly considered that it was desirable to standardize the application of the principles and rules relating to the right of asylum and requested the ILC to turn to the codification of this topic. In 1967 the General Assembly adopted a Declaration on Territorial Asylum (resolution 2312 (XXII)). In 1974 the General Assembly referred the text of a draft Convention on Territorial Asylum to a Committee of Experts, and the report of th Committee will come before the thirtieth session of the General Assembly.

6/ In addition to the Latin American statements, see for example those of t representatives of Algeria, Egypt, Federal Republic of Germany, Ghana, Iraq, Mali, New Zealand, Nigeria, Sweden and Thailand.

7/ In stating his delegation's cautious approach, the representative of the Soviet Union admitted that in extreme cases humanitarian considerations would prevail (A/C.6/SR.1509, p. 3).

8/ This is why it is no argument against a broader examination of diplomati asylum to say that it has hitherto been a matter primarily of regional concern in Latin America. The protection of human rights is a matter of universal interest.

: raised against every evolving rule of customary international law and against 'ery treaty commitment - because, in effect, every such rule or commitment ıvolves a limitation on the otherwise unrestricted power of the State. 9/ The ıestion really is whether the particular conception of diplomatic asylum imposes ı unacceptable limitation on the power of a State within its territory. This has) be answered in terms of the intrinsic merits of the rule - a matter which :pends upon the degree of need for the rule and upon its content.

. But to answer the question whether a rule may or may not involve a limitation ? State sovereignty is not to answer the question of whether or not the rule is)rth having. It is to be noted that the States of Latin America, which have lways been emphatic about the importance of their sovereignty, have seen nothing ıconsistent therewith in the acceptance of diplomatic asylum. This is evidenced r the provision made for diplomatic asylum in no less than five conventions, ıose of Montevideo in 1889, 1933 and 1939, of Habana in 1928 and of Caracas in)54, as well as by the fact that the countries of Latin America have more than ıce argued unanimously and eloquently before the General Assembly at one time or ıother in favour of diplomatic asylum.

. Propriety of use of diplomatic premises

). The second objection lies in the suggested inconsistency between the grant of sylum and the status and functions of diplomatic missions. Reference was made ı the Sixth Committee debate in 1974 to the provision in article 41 of the ienna Convention on Diplomatic Relations that "the premises of the mission must ot be used in any manner incompatible with the functions of the mission as laid own in the present Convention ..."; and, it was said, the grant of asylum was not uch a use.

1. The point is difficult to sustain. First, the functions of the mission "as aid down in the present Convention" are stated (in art. 3) to be "inter alia". he list is not exhaustive and was deliberately left open-ended. 10/ In any case, t must not be assumed that the grant of diplomatic asylum is necessarily nconsistent with "promoting friendly relations between the sending State and the eceiving State" - a function expressly mentioned in article 3(1)(e). Lastly, ttention must be directed to the words which follow those just quoted, namely

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9/ The representative of Uruguay commented in the Sixth Committee debate in 974 that it was surprising that the institution of diplomatic asylum should be egarded with misgiving since the rights guaranteed were all recognized and rotected by the Universal Declaration of Human Rights and the United Nations harter (A/C.6/SR.1506, p. 3).

10/ It was for this reason that the Latin American States were able to ratify hat Convention. However, as the representative of Uruguay pointed out in the ebate of the Sixth Committee in 1974, the Vienna Convention did not preclude the egitimate exercise of the right of diplomatic asylum (A/C.6/SR.1506, p. 4).

"... or by other rules of general international law or by any special agreements". The significance of these additional words is that they confirm that the permissible uses of diplomatic premises are not fixed by the Convention alone. Thus, one is brought back to the same point as is made above in reply to the first objection, namely, that the real question is whether the grant of asylum ought to be regarded as an appropriate use of diplomatic premises. This is a matter for determination by the international community. In the Latin American States parties to the Conventions already mentioned, the answer is in the affirmative. A negative answer would have to be justified on more specific grounds. None have yet been advanced.

7. Debate cannot by itself be counter-productive

12. The third objection consists of the suggestion that exploration and clarification of the concept of diplomatic asylum may be counter-productive. It is said that what may now be tolerated as an occasional practice in circumstances of clear and present threat to the lives or liberty of individuals may in the future be excluded if an attempt is made to elevate unregulated practice into the sphere of established law.

13. This objection is not persuasive. The real question is whether the factors which induce a territorial State to acquiesce in a grant of diplomatic asylum in the absence of specific treaty provisions are such as to lead that same State to refuse such acquiescence merely because the subject has been debated in the General Assembly. If States which feel able at present to grant or to acquiesce in the granting (as the case may be) of asylum change their attitude after public discussion of the matter, they will be doing so not because of the discussion but for some extraneous reason of a non-legal character.

14. Indeed, it would seem that relations between States are more likely to be improved if the factors involved in the grant of diplomatic asylum are publicly examined. This is true particularly of the consideration that the grant of diplomatic asylum cannot be considered as an unfriendly act. It is not unfriendly for the very reason that in practice asylum is granted only in exceptional and extraordinary circumstances. It thus falls outside the normal relations between the grantor State and the territorial State. 11/

11/ During the debates in the Sixth Committee in 1974, the representative of Colombia noted that during the century of Colombia's independent existence diplomatic asylum had been granted more than 50 times in Colombia. The practice had not had any adverse effect on the fraternal relations between Colombia and other Latin American countries (A/C.6/SR.1505, p. 8). The representative of Ghana said that no one had yet given any concrete example of cases where the principle had been abused in Latin America. If there were isolated cases, they certainly would not justify a condemnation of the principle itself (A/C.6/SR.1510, p. 15).

8. Universal benefit of diplomatic asylum

15. The positive case for consideration and clarification of diplomatic asylum is contained largely in the answers developed above to three of the main objections raised to this agenda item. But it would be unrealistic to suppose that an attitude of Member States would not be unaffected by an assessment of how diplomatic asylum affects them either as prospective territorial States or as prospective grantors.

16. When the matter is looked at through the optic of a territorial State, it will be conditioned, to some extent, by consideration of the use to which asylum may be put within that State's own territory. It requires little imagination to foresee situations in which a State may be embarrassed because a person seeks refuge in a foreign embassy. But in practice the risk is significantly reduced by the fact that asylum is not granted unquestioningly. The grantor State is likely to assess every case very carefully in order to decide whether the conditions are met. And it cannot be assumed that just because the concept of asylum is acceptable, States will abuse it or even accord it lightly. Behaviour falling short of these standards would undermine the whole concept of diplomatic asylum, resting as it does upon the assumption that States granting it will be guided by prudence, caution and due regard for international opinion. A further and real limitation upon the grant of diplomatic asylum consists of the obvious practical difficulties associated with it.

17. Nor should it be forgotten that the subject of techniques to diminish or eliminate abuse of diplomatic asylum falls within the scope of discussion of this agenda item.

18. As to being a grantor State, it hardly needs saying that while today no particular advantage may be seen in the grant of asylum in one political context, some aspects of international life may alter so rapidly and radically that the capability of granting asylum may come to be seen in an entirely different light.

10. Substantive content of the concept of diplomatic asylum

19. The comments so far made in this memorandum assume that diplomatic asylum either is an institution already accepted in customary international law (as the Government of Australia believes to be the case) or that, if in the view of some it is not, it is at the least a practice so tolerated by States as to approach the status of customary international law. It is, however, to be hoped that the debate in the General Assembly will demonstrate the existence of general agreement upon the main elements of the conception.

20. Of these, the first is the discretionary character of the right to grant asylum. It is generally agreed that a State is not obliged to grant asylum if it considers it inappropriate to do so. But while it retains a complete discretion in this regard, it must still pay heed to the relevant moral and humanitarian considerations.

21. It is necessary, next, to identify the person to whom asylum may be granted. And here concern is not only with the admission of an individual who is literally running away from a lawless and possibly murderous mob. In such a case, basic decency normally requires that he be given refuge till the danger has passed.

22. Rather, the problem is to decide (the case of mob pursuit apart) what individuals may seek diplomatic asylum. It is clear, so Australia believes, that asylum may be granted only to persons whose lives or liberty are threatened on account of their political views (including views on colonialism and apartheid), race, religion or nationality. Stated in negative terms, asylum may not be granted to persons such as common criminals.

23. A further essential requirement is that of the urgency of the need for refuge. It must be the only resort open to the fugitive.

24. Diplomatic asylum carries with it the obligation on the part of the grantor State to notify the territorial State of the grant of asylum, to ensure that the asylee does not conduct himself within the place of asylum in a manner prejudicial to the territorial State and to arrange for the removal of the asylee upon the grant of a safe conduct by the territorial State.

25. The initial right to qualify the character of the offence and to determine whether the need for asylum is "urgent" rests with the grantor State.

26. The Government of Australia sees these as the essential elements of the grant of diplomatic asylum. It sees no difficulties about stating these essentials in the context of a declaration or codification of the law on the subject. This indeed has already been done in the various Latin American conventions on diplomatic asylum. 12/ It is also to be noted, for example, that the identification of persons entitled to seek asylum and the acceptance of the unilateral right of the State granting asylum to assess the justification of that grant have already been the subject of a wide measure of agreement in the discussions relating to the kindred subject of territorial asylum. Finally, the Government of Australia draws attention to the comprehensive and constructive manner in which the subject has been developed in the Draft Convention on Diplomatic Asylum, prepared by the International Law Association. 13/

12/ The Australian Government shares the view expressed by the representative of Ghana in the debate in the Sixth Committee in 1974 that the examination of the question of diplomatic asylum will not be as difficult as some may think, because a great wealth of material on the subject already exists, especially in Latin America (A/C.6/SR.1510, p. 16). The representative of Turkey also observed that a preliminary examination of the humanitarian, legal and other aspects of the question would, in particular, represent a just acknowledgment of the remarkable Latin American tradition of diplomatic asylum. He noted that his own country had some experience in that regard (A/C.6/SR.1507, p. 6).

13/ See International Law Association, Report of the 55th Conference, New York, 1972, pp. 199-207. The substantive provisions of this draft convention are reproduced in chapt. IV of part II of this report.

11. Objective of the present initiative

27. It has been recognized by a number of representatives in the Sixth Committee that the subject of diplomatic asylum warrants an extended substantive discussion. In determining the end towards which this discussion should move, one thing is clear. Nothing should be said nor should anything be done to weaken the institution of diplomatic asylum as developed and practised by the States of Latin America. Beyond that the Government of Australia hopes that there will be a thorough examination of the question of diplomatic asylum with a view to the achievement of substantial agreement for the initiation of a process of codification of the subject.

AUSTRIA

[Original: English]
[30 June 1975]

The Republic of Austria takes a particular interest in the question of diplomatic asylum, especially in the light of its humanitarian traditions as a country offering asylum. Austria is well aware of the important humanitarian considerations underlying the present efforts to raise this problem in the United Nations. In discussing this question, however, we must bear in mind that the premises of foreign missions are not to be deemed part of the territory of the foreign country concerned. Rather, they are essentially subject to the law of the receiving country. It is only the enforcement of the receiving country's law which is suspended in certain respects with regard to such premises. Hence, unlike the granting of territorial asylum, the decision to provide asylum on the premises of a diplomatic or consular mission constitutes a grave interference with the sovereignty of the receiving country. Any such interference with another State's sovereignty is only justifiable under special circumstances: where a person is in immediate, serious danger, or where a State persecutes the person concerned in a manner incompatible with minimum standards of human rights.

It is only in such cases that some kind of customary right might perhaps be deduced from the humanitarian principles of the law of nations, although the institution of "diplomatic asylum" is unknown to general international customary law. Hence a "codification" of the law of diplomatic asylum, if possible at all, would only be feasible in this restricted sense. Beyond that, international legal norms could only be created by intergovernmental agreements. A convention on diplomatic asylum would be useful inasmuch as it would permit a clear demarcation and definition of diplomatic asylum. This would make it easier to counter abuses in connexion with the granting of this type of asylum. On the other hand, we have to bear in mind that hitherto those who have granted diplomatic asylum in exceptional cases for humanitarian reasons have been able to act in a field largely uninhibited by legal rules, except where specific treaties existed between the countries concerned. This has permitted a high degree of flexibility both to the State granting asylum and to the State whose national was asking for diplomatic asylum. A precise legal demarcation within the framework of an international convention would impair this flexibility. One result of this could be a heightened danger of diplomatic imbroglios.

BAHRAIN

[Original: English]
[23 July 1975]

The question of diplomatic asylum will arise when a person seeks refuge in the premises of a foreign diplomatic mission in the receiving State. The granting of diplomatic asylum by a foreign mission involves a derogation from the sovereignty of the receiving State. It withdraws the offender from the jurisdiction of the territorial State and constitutes an intervention in matters which are exclusively within the competence of that State. In the absence of an established legal basis, such derogation from territorial sovereignty is not recognized under international law.

Bahrain has not concluded any international agreement relating to diplomatic asylum. Moreover, there are no decisions of courts or tribunals respecting the question of diplomatic asylum. Generally, Bahrain supports the traditional view and does not favour according unqualified recognition to diplomatic asylum.

BELGIUM

[Original: French]
[11 July 1975]

1. The Belgian Government considers that diplomatic asylum must be viewed from the standpoint of purely humanitarian considerations.

The recognition and acceptance of this humanitarian basis can only serve to promote greater flexibility in relations between the entity granting asylum and the State in whose territory the granting of asylum is authorized.

2. In spite of its humanitarian nature, the granting of diplomatic asylum implies a derogation from the State sovereignty of the State authorizing the granting of asylum.

Once the purely humanitarian nature of the granting of asylum is established in principle, such derogation from State sovereignty cannot by any means be viewed as interference in the domestic affairs of States.

The granting of diplomatic asylum does not detract from the consideration and respect shown for State sovereignty.

Nor can the granting of diplomatic asylum be construed as the formulation of a value judgement concerning a domestic situation.

3. However, the Belgian Government is not convinced that it would be useful to draw up a legal instrument on principles governing the practice of diplomatic

asylum. Such an instrument might minimize or have too repressive an effect on the humanitarian motivation and the personal interpretation of certain factors.

4. The Belgian Government wishes to emphasize that it regards the granting of diplomatic asylum as an option, but does not at all view it as a right that can be claimed by any person seeking asylum.

Freedom of decision in this matter must be safeguarded.

5. Accordingly, the Belgian Government is convinced that the institutionalization of diplomatic asylum could rob it of much of its flexibility, which enables it to function smoothly and constitutes its foundation.

6. The Belgian Government fully appreciates the efforts made by the Secretary-General of the United Nations to throw light on the present procedures applied with respect to diplomatic asylum.

BOLIVIA

[Original: Spanish]
[8 April 1975]

The Government of Bolivia wishes to join in congratulating the Australian delegation on generating the interesting discussion held last year in the Sixth Committee by introducing a draft resolution on the "Question of diplomatic asylum", an institution having a long tradition and ancient legal lineage in the Latin American world.

At the twenty-eighth session, the General Assembly also asked the Sixth Committee to consider the draft convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents. At that time, a group of Latin American countries managed to introduce an article safeguarding the practice of diplomatic asylum, which was thus incorporated into a new international legal document. 14/

In the debate that arose at that stage, a number of delegations voiced objections. These were all carefully considered and dealt with. It is quite possible, however, that some delegations still entertain objections about anything which, being an apparently limited regional tradition, could generate fresh conflicts without affording sufficient compensation. But that should not be the case. In the Latin American countries, with their long and tried experience in the practice of the right of diplomatic asylum, the latter is regarded as a natural act, a commitment solidly based on the mutual good faith

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14/ See art. 12 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (General Assembly resolution 3166(XXVIII)).

of the contracting parties, whose fulfilment has always been strictly in accordance with the rules stipulated for the purpose.

The practice of diplomatic asylum has a long history in Latin America. The documentation to be prepared and circulated by the Secretary-General will fill the information vacuum existing with regard to this humanitarian institution in a large number of States belonging to the international community.

Although it is true that diplomatic asylum is a typically American legal norm, on more than one occasion States which considered it an institution alien to their legal system have had recourse to it and offered asylum when circumstances showed, at difficult times of internal upheaval and confrontation, that the principle of the extraterritoriality of diplomatic missions could also afford relief in times of internal strife and save valuable human lives which, without that last resort, might have been lost.

For the aforesaid reasons, the Government of Bolivia is extremely pleased that the United Nations General Assembly, in its resolution 3321 (XXIX), considered it desirable to initiate preliminary studies on the humanitarian and other aspects of the question of diplomatic asylum and decided "to include in the provisional agenda of its thirtieth session an item entitled 'Report of the Secretary-General on the question of diplomatic asylum'", which will be of great help in determining the nature and establishing the importance of the question and paving the way for more universal application.

CANADA

/Original: English/
/7 March 1975/

It is the Canadian view that no general right of asylum on diplomatic premises is recognized in contemporary international law. While certain States recognize the right of diplomatic asylum among themselves, this is a regional practice only and is not an accepted norm of State practice, recognized by the international community as a whole, and consequently is not a practice sanctioned by general international law.

Canadian policy related to so-called "diplomatic asylum" is to follow the generally accepted principle of international law and therefore only to grant protection in Canadian diplomatic premises for purely humanitarian reasons. This protection is granted only in exceptional cases where the life, liberty or physical integrity of the individual seeking protection are threatened by violence against which local authorities are unable or unwilling to offer protection. This protection is extended for reasons of humanity, and is done unilaterally. Canada does not recognize any right of individuals to have such protection.

Because it is the duty of the diplomatic representatives of the sending State to respect the laws of the receiving State and not to interfere in the

internal affairs of that State, Canada applies the rule respecting the granting of humanitarian protection in circumstances which are closely circumscribed. Thus, protection by Canadian diplomatic missions for humanitarian reasons is only accorded to individuals whose lives, liberty or physical well-being are in imminent danger under circumstances of a violent or unstable nature. Canada does recognize that situations can arise, from time to time, whereby an individual, be he a Canadian citizen or otherwise, is in imminent danger of physical harm or loss of life or liberty because generally accepted standards of justice and social order may be absent. It is in these circumstances that a temporary safe haven on Canadian premises may sometimes be granted.

CZECHOSLOVAKIA

[Original: English]
[18 August 1975]

The Czechoslovak Socialist Republic is of the opinion that it is necessary to provide every assistance to persons who in their countries are persecuted for their progressive views and activity, for their participation in the national liberation struggle, etc. Therefore the fundamental law of the Czechoslovak Socialist Republic - its Constitution of 1960 - expressly provides that the Czechoslovak Socialist Republic grants on its territory the right of asylum to foreign citizens persecuted for the defence of the interests of the working people, for participation in the national liberation struggle, for scientific and artistic creative work or activity in the defence of peace.

Like many other States however, the Czechoslovak Socialist Republic does not recognize the institution of diplomatic asylum. This position is based on the generally recognized view in international legal theory that diplomatic asylum, including the granting of refuge in the premises of a diplomatic mission to persons prosecuted in the receiving State, is not recognized, unless it is regulated in agreements between two or more respective States. Czechoslovakia has not concluded any such agreement.

The Czechoslovak Socialist Republic is a party to the Vienna Convention on Diplomatic Relations. Granting of asylum is not among the rights or duties of diplomatic missions under this Convention, and it can easily result in the deterioration of relations between States, the strengthening and promotion of which diplomatic missions should seek.

It follows from the above-mentioned position that Czechoslovakia is fully aware of the humanitarian aspects of the institution of asylum. At the same time, however, it is of the opinion that the problem defined as diplomatic asylum is very controversial. Therefore the competent Czechoslovak authorities do not consider it useful to continue the study of the problem of diplomatic asylum within the framework of the United Nations.

DENMARK

[Original: English]
[21 July 1971]

Diplomatic asylum is frequently defined as "the process whereby an Embassy provides refuge (which can turn out to be protracted in time) to persons seeking refuge on its premises in a foreign country in order to avoid the jurisdiction of the local authorities."

This particular concept is the result of a regional practice existing among the Latin American countries. This practice is not recognized as part of ordinary international law, cf. the Decision of the International Court of Justice of November 20, 1950 (I.C.J. Reports 1950, p. 282 et seq.).

The Danish Government shares this view but will still be willing to deviate from the general rule and accept that on the basis of humanitarian considerations a person may be granted temporary protection provided he is exposed to an imminent physical threat.

In the light of the foregoing general observations the Danish Government counsels against the conclusion of a convention on this topic inasmuch as the nature of the evaluations, on which the granting of diplomatic asylum must be based, render their formalization in a convention inexpedient.

ECUADOR

[Original: Spanish]
[10 April 1975]

Ecuador, together with other Latin American countries, supported the inclusion of the item on diplomatic asylum in the provisional agenda for the thirtieth session of the General Assembly, in the belief that it would be advisable to conclude a general international agreement on the principles that should govern diplomatic asylum.

Although the institution of diplomatic asylum is all too well known in Latin America, it is well worth studying the possibility of broadening its scope to make it universal. Consequently, Ecuador's views may be summed up as follows:

Diplomatic asylum has a long history in Latin America and has at all times received the whole-hearted support of Ecuador, which has consistently upheld the principle complying with the positive rules laid down in treaties conventions as well as taking account of customary practice. In addition, it has concluded various bilateral agreements with other States.

The Latin American precedents must inevitably be taken into consideration in connexion with any multilateral convention concluded under the auspices of the United Nations. Ecuador considers that a universal convention should embody such principles as Latin American theory and practice have shown to be essential for the observance and effectiveness of diplomatic asylum.

It thus considers that such a convention must necessarily make provision for:

(a) The principle that asylum should be granted exclusively for the protection of persons who are being sought for political reasons or for political offences;

(b) The right of every State to grant or refuse diplomatic asylum;

(c) The principle that it shall rest with the State granting asylum to determine the nature of the offence or the motives for the persecution;

(d) The principle that persons granted asylum shall be prohibited from engaging in acts contrary to the public peace or interfering in the internal politics of the territorial State or the State granting asylum;

(e) The principle that the granting of asylum shall not be subject to reciprocity;

(f) A declaration to the effect that the State granting asylum is not required to settle the person granted asylum in its territory; and

(g) The principle that the State granting asylum should be the one to decide on the urgency of the asylum requested.

Besides the points noted above, consideration should also be given to the other supplementary provisions contained in the Caracas Convention of 1954, which is in force in the Latin American world.

FRANCE

[Original: French]
[28 August 1975]

The Government of the French Republic has the following comments to make on the question of diplomatic asylum:

1. The French Government is very sympathetic to the humanitarian considerations which led the Australian delegation to raise the question of diplomatic asylum at the twenty-ninth session of the General Assembly. It understands that, in so doing, the Australian delegation was guided solely by the desire to explore new means which, in some cases, could help to save threatened human lives.

The French Government is always prepared to collaborate in studies of this nature when it considers that they are likely to attain the desired goal. However, it does not believe that that is so in the present case. The proposed study is confronted with such difficulties that the French Government regrets being unable to declare itself in favour of it.

2. It should first of all be pointed out that, unlike territorial asylum, diplomatic asylum is not an institution of international law. There is no generally recognized customary law on the subject.

Diplomatic asylum is an essentially Latin American practice. Its development in that region and its embodiment in successive conventions are largely due to extra-juridical factors, such as good-neighbourly relations between the States of the South American continent, their political interests and their common legal systems and traditions.

In other regions of the world, such as Europe, this practice, which was based on the concept of extraterritoriality of diplomatic premises - a theory now abandoned - and which, moreover, from the very first gave rise to disputes both among writers on legal topics and between States, is not recognized, at least in the form in which it exists in Latin America.

3. The fact that the granting of diplomatic asylum, unlike the granting of territorial asylum, is not considered to be in conformity with a rule of customary international law is due to the basic difference which exists between these two acts.

A State which grants asylum in its own territory is exercising one of its sovereign rights, in the sphere of competence recognized as belonging to it by international law. The decision to grant asylum depends on it alone, even if its decision is subject, as it may be, to certain conditions based on the agreements by which the State is bound. It in no way impinges on the sovereignty of other States.

In the case of diplomatic asylum, on the other hand, the refugee is in the territory of the State which is seeking him. The granting of asylum in a place where, subject to the privileges and immunities defined by international law, the laws of the State of residence are applicable constitutes a major derogation from the sovereignty of that State, in so far as it has the effect of putting an offender out of reach of the justice of that State. It is therefore not possible to grant diplomatic asylum in the territory of a State which does not agree to such a derogation from its sovereignty.

Furthermore, the decision to grant asylum may be regarded by the State concerned as interference in its internal affairs of a kind which is hardly compatible with the status and functions of a diplomatic mission.

4. It should be added that if, in disregard of objections pertaining to the principles of sovereignty of the territorial State and non-interference in the internal affairs of States, an attempt were made to formulate, in the United Nations, rules concerning diplomatic asylum, very great difficulties would be encountered, and the results attained might be the opposite of what was sought.

In this respect, the first point that must be noted is that, as the discussions at the twenty-ninth session of the General Assembly showed, the very concept of diplomatic asylum is controversial. Some States, while denying the existence of a right of diplomatic asylum from the legal point of view, are prepared, in exceptional circumstances, to provide refuge in their embassies to persons in distress. Others regard such refuge, granted for purely humanitarian purposes, and temporarily, as being simply a form of diplomatic asylum.

Furthermore, the practice of States is very varied. Some States do not recognize diplomatic asylum where they themselves are concerned and do not practise it. Others, while not recognizing diplomatic asylum, practise it by way of exception for humanitarian purposes if the State of residence consents to it. Others, such as many Latin American States, accept and practise it.

The circumstances in which diplomatic asylum is granted are also extremely varied. The exceptional nature of the practice of diplomatic asylum makes it impossible to identify standard cases and to establish general rules. If principles relating to the granting of diplomatic asylum are defined, any situation which has not been covered will ipso facto be excluded. Yet how could one foresee on a universal level, all the cases which may arise?

Furthermore, States, according to their particular concerns, will wish to exclude the possibility of granting asylum in specific cases. It would be difficult to reach agreement on a list of such exceptions, and it can easily be imagined that it would deform the concept of diplomatic asylum held by the States which now practise it.

Finally, the introduction of the practice of diplomatic asylum in regions where it is not in keeping with any tradition or with historical evolution would inevitably cause many disputes between States.

In view of the foregoing, the French Government considers that the question of diplomatic asylum does not lend itself to continued study within the United Nations, and that in any case it would not be possible to formulate rules in treaty form on the subject at a universal level. The only result would be solutions which went too far to be acceptable to those States that do not at present agree to this practice and fell short of the solutions accepted by some countries.

Furthermore, France is among the States which consider that the formulation of rigid rules on this subject might run counter to the humanitarian concerns which inspired the sponsors of resolution 3321 (XXIX).

It believes that, in order to meet these concerns, it would be better to continue the efforts that have been undertaken to develop respect for human rights, rather than try to institutionalize the practice of diplomatic asylum.

IRAQ

[Original: English]
[16 July 1975]

The Government of the Republic of Iraq considers that there are no general rules in international law concerning diplomatic asylum. Diplomatic asylum may be regarded as a special arrangement recognized only in some parts of the world and especially in Latin America. Iraq is of the opinion that diplomatic asylum is subjected to the sovereignty of State and its consideration according to the circumstances of each case.

JAMAICA

[Original: English]
[12 August 1975]

... the Jamaica Government supports the broad humanitarian grounds which provide the basis for a grant of diplomatic asylum.

... the further comments of the Government of Jamaica are: that the system of diplomatic asylum must be clearly distinguished from the régime of territorial asylum; that the régime should only be used to protect persons who are being persecuted as a result of their political activities, and not to shelter common criminals; that the régime will be ineffective without the corresponding obligation of territorial States to grant safe-conduct of the asylees out of the country; that the régime will only be successful if it is sensitive to the integrity and sovereignty of territorial States and that for the same reason a grant of diplomatic asylum should only be made in urgent and exceptional cases.

LIBERIA

[Original: English]
[21 July 1975]

1. The right to grant diplomatic asylum should be accorded to diplomatic missions. If a refugee is allowed to remain in an Embassy, the correct procedure for the territorial State to adopt, is to take up the matter with the foreign State concerned and not to break into the premises.

2. The right of diplomatic asylum should be allowed persons who have committed political offences and, on humanitarian grounds, to persons fleeing from imminent personal danger of persecution on account of race, religion, nationality, membership of a particular social group and political opinions. Persons who have committed common crimes should be excluded from the category of those entitled to diplomatic asylum.

MADAGASCAR

/Original: French/
/26 May 1975/

In international usage the term "asylum" necessarily implies the notion of protection and assumes two forms: one, internal or territorial asylum, is granted as its name indicates, to aliens in the actual territory of the State; the other, called external asylum, is granted outside that territory, e.g. in diplomatic residences and consular buildings (diplomatic asylum should be placed in this second category). It is nevertheless clear that under public international law only two issues arise in a discussion of the right of asylum, namely, the unimpeded right of a State to receive any individual seeking refuge in its territory, and the right of the persecuted individual himself to obtain asylum in a foreign State. The first of these rights arises essentially from humanitarian or other considerations which the State applied to has full discretion to be guided by or to disregard, barring the existence of special bilateral agreements. As to the second, there is no rule under existing positive international law which denies a foreign State the right either to expel the person to whom it has granted asylum from its territory or to deny him asylum when he requests it - even though the principle of non-extradition for political offences is now commonly embodied in treaties - since, if extradition should be decided upon, there would by the very nature of the case be no protest by the State which was seeking the surrender of the person concerned.

There is, nevertheless, a tendency at the international level to support the individual's inherent right to receive asylum. Reference may be made in this connexion to article 14 of the Universal Declaration of Human Rights, which states that "Everyone has the right to seek and to enjoy in other countries asylum from persecution", except in the case of non-political crimes and acts contrary to the purposes and principles of the United Nations. It remains true, however, that individuals are very often denied admission, turned away or expelled on various grounds connected with important considerations of national security or protection which are entirely defensible in view of the political problems which may confront a State if it harbours in its territory elements hostile to another State with which it maintains excellent diplomatic relations.

It should also be noted that the granting of asylum imposes upon the State granting it the obligation to keep the refugees in question in its territory and to guarantee them the free possession and use of their property as well as the duty to refrain from seeking information as to their names and addresses and from transmitting documents - even those of a political nature - which might be in the possession of the persons concerned. All these obligations are, moreover, independent of the State's responsibility for enforcing certain conditions of residence and maintaining surveillance with regard to the behaviour of asylees.

These points have been raised with a view to promoting a clearer understanding of the problem of diplomatic asylum per se, which, as indicated above, is only one form of external asylum.

NORWAY

[Original: English]
[11 July 1975]

The concept of diplomatic asylum varies in different parts of the world. According to the opinion, however, which would seem to be the prevailing one in most parts of the world - the main exception being Latin America - diplomatic asylum is not recognized as a special legal institution in itself. This is also the view of the Norwegian Government. The inviolability of the premises of a diplomatic mission should, in the opinion of the Norwegian Government, in principle not be used for the purpose of protecting persons in a way that would prevent the receiving State from exercising its jurisdiction.

However, there may, exceptionally, be cases in which humanitarian considerations and the necessity of protecting fundamental human rights are of decisive importance. In the view of the Norwegian Government, it would be inhuman and repugnant in specific situations not to use a possibility of protecting the life of a person or of saving him from inhuman treatment or punishment. For humanitarian reasons it should therefore be considered legitimate for diplomatic missions to grant protection in their premises in such exceptional situations.

The Norwegian Government considers, however, that there is no need to codify the circumstances surrounding such evident humanitarian obligations. It would not seem immediately necessary to elaborate an international legal instrument in a field where humanitarian rather than strictly legal considerations determine the actions of States. The situation is different in regions where the institution of diplomatic asylum is recognized as a legal institution and where, for that reason, it may be appropriate and desirable to lay down legal rules on this subject in regional conventions or other international instruments.

OMAN

[Original: English]
[16 April 1975]

The Government of Oman has no comments or views to contribute at this stage; there is no law governing the question [of diplomatic asylum] and there has not been a case where an individual has sought diplomatic asylum in Oman.

PAKISTAN

[Original: English]
[10 June 1975]

1. The Government of Pakistan notes with appreciation the initiation of the study on the question of diplomatic asylum. The respect for human rights and fundamental

:edoms is the cornerstone of Pakistan Government's policy. It would welcome any :ort intended for the furtherance of human well-being and dignity, and would :approve any efforts intended for exacerbation of their sufferings because of .itical, cultural, racial, ethnical or religious differences.

However, the Government of Pakistan, mindful of the de-stabilizing effects of unrestricted right to grant diplomatic asylum, would suggest a cautious approach the problem. The granting of diplomatic asylum has been sporadic and less roured on continents other than Latin America. It, therefore, failed to attain appropriate place in international law. The question of diplomatic asylum is :entially de lege ferenda.

In the considered view of the Government of Pakistan, future study on the)ject should be based on the following principles:

(a) Diplomatic asylum may be granted in the case of persecution for political, :ial and religious reasons where there is an imminent danger to life. This :ht of granting asylum should not be extended to cover danger to liberty.

(b) Diplomatic asylum should not be converted into territorial asylum by moving the person seeking asylum to the territory of the granting State.

(c) The person seeking asylum should be handed over to the authorities of :e State where the offence has taken place when normal procedural guarantees are :ilable or assured.

POLAND

/Original: English/
/9 June 1975/

The Polish Government considers diplomatic asylum as a typical regional :stitution which is customarily alien to States outside the region of Latin America.

It might be considered as an institution limiting the sovereignty of a rritorial State and as such may be construed as interference in its internal fairs.

Therefore, the Polish Government believes that this institution is incompatible th generally recognized principles of diplomatic and consular law, in particular th article 41, paragraph 1 of the Vienna Convention on Diplomatic Relations and th article 55, paragraph 2 of the Vienna Convention on Consular Relations.

In view of the foregoing the Polish Government is of the opinion that the)ject in question should not be studied on the United Nations forum, in rticular due to the fact that many other problems of much higher priority are ill pending their solution.

SINGAPORE

[Original: English]
[26 June 1975]

The Singapore Government takes this opportunity to express its appreciati to the Government of Australia for having brought the question of diplomatic asylum before the General Assembly of the United Nations. In taking this initiative, the Australian Government was entirely actuated by humanitarian considerations, which are shared by the Government of Singapore. Whereas the practice of granting diplomatic asylum to political refugees has a long histor the legalization of the practice has developed and taken root in the continent of Latin America. The acceptance of this institution in that continent has cushioned Latin American countries against one of the consequences of politica turmoil and frequent changes of Government. The institution has evolved to an a felt need of the Latin American countries. It must be obvious that the wide application of the institution must depend upon the relevant political circumstances prevailing in other parts of the world. In many parts of South- Asia, the Governments are confronted by armed insurgencies of dissident member of their societies. For this reason and in the light of other political reali in South-East Asia, the conditions would not appear to be appropriate for the acceptance of the institution of diplomatic asylum.

Singapore is one of the few countries in South-East Asia that does not ha insurgency problem within its territory. It is, however, situated in an area in which many of the countries have such problems. If the Singapore Governmen were to grant diplomatic asylum to the insurgents of its neighbouring countrie this would create problems in its relations with such neighbouring countries. Singapore Government is also of the view that the institution of diplomatic asylum should not be applied to such insurgents and other anti-national elemen who have taken up arms or resorted to other unconstitutional means to achieve their objectives.

For the above reasons, the Government of Singapore is, therefore, of the view that the present political conditions in South-East Asia are not appropri for the reception of the institution of diplomatic asylum.

SWEDEN

[Original: English]
[25 June 1975]

The concept of diplomatic asylum varies in different parts of the world. According to the opinion, however, which would seem to be the prevailing one i most parts of the world - the main exception being Latin America - diplomatic asylum is not recognized as a special legal institution in itself. This is al the predominant view in Sweden. The inviolability of the premises of a diplom mission should, in the opinion of the Swedish Government, in principle not be

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used for the purpose of protecting persons in a way that would prevent the receiving State from exercising its jurisdiction.

However, there may, exceptionally, be cases in which humanitarian considerations and the necessity of protecting fundamental human rights are of decisive importance. In the view of the Swedish Government, it would be inhuma and repugnant in specific situations not to use a possibility of protecting the life of a person or of saving him from inhuman treatment or punishment. For humanitarian reasons it should therefore be considered legitimate for diplomati missions to grant protection in their premises in such exceptional situations.

The Swedish Government considers, however, that there is no need to codify the circumstances surrounding such evident humanitarian obligations. It would seem immediately necessary to elaborate an international legal instrument in a field where humanitarian rather than strictly legal considerations determine th action of States. The situation is different in regions where the institution of diplomatic asylum is recognized as a legal institution and where, for that reason, it may be appropriate and desirable to lay down legal rules on this sub in regional conventions or other international instruments.

TURKEY

/Original: English
/11 July 1975/

1. As a form of asylum granted by a diplomatic mission of one country in another country, diplomatic asylum constitutes another form of political asylum, distinct from territorial asylum. In other words, political asylum may often manifest itself as diplomatic asylum.

2. Territorial and diplomatic asylum are not complementary procedures but two different forms of political asylum. The practice of territorial asylum is general and widespread in the international community. The practice of diplomat asylum on the other hand has a limited and regional character.

3. Though having very little experience in the field of diplomatic asylum, the Turkish Government attaches importance to its humanitarian aspect provided that diplomatic asylum is applied under very exceptional conditions. The codificatic and elaboration of principles and rules relating to diplomatic asylum should be undertaken by the International Law Commission. As a matter of fact, the codification of rules relating to the right of asylum was included in the preliminary agenda of this body as far back as its first session, and General Assembly resolution 1400 (XIV) has recognized the competence of the Internationa Law Commission in connexion with the codification of the principles and rules of the right of asylum.

4. Whichever body is selected, the work to be undertaken with a view to codify

the principles and rules of diplomatic asylum should particularly take into account the following:

(a) That diplomatic asylum is not included among the functions of the diplomatic mission, which would result in diverting the mission from its main tasks;

(b) That persons convicted of non-political offences can in no way benefit from diplomatic asylum;

(c) That diplomatic asylum, taking into account its exceptional nature, should be applicable to very limited cases and to a very restricted category of persons;

(d) That final decision-making authority as regards the nature of the case and the granting of diplomatic asylum should be recognized to the Government whose diplomatic mission has been used for asylum.

URUGUAY

/Original: Spanish/
/26 August 1975/

The right of asylum, which initially was of a religious nature, eventually developed into a concept based on the immunity of legations. Grotius, in considering international law from the standpoint of natural law, based the right of asylum on the principle of extraterritoriality. This concept has been abandoned in recent times, and the right of asylum has become linked to the immunity of the diplomatic agent, which has expanded to cover everything directly or indirectly connected with him.

Among writers who favour it, the right of asylum is recognized as "a humanitarian institution based on international protection of the basic rights of the individual".

Although diplomatic asylum has not yet been sanctioned by international law, territorial asylum has been recognized as a fundamental human right.

According to Uruguayan doctrine, "asylum is not a basic substantive right but a basic remedial right of the individual, when judicial means cannot be used for the effective protection of his rights and liberties".

Nature of the right of asylum

(1) In the view of some writers, embassies have the right to grant asylum - this being the predominant position, based on considerations of a political nature - and the latitude to reach a decision according to the circumstances of th moment.

(2) Other writers consider that there is a duty to grant asylum; the persecuted party cannot be turned away when the necessary conditions obtain. This is based on humanitarian considerations. A diplomat who refused asylum would be acting contrary to international law in its basic sense.

The position of Uruguay has consistently been that there is a duty to grant asylum for reasons based on human rights, which do not permit discrimination on grounds of race, sex, religion or opinion. The view taken is that the right to asylum cannot be left to the discretion of a diplomat.

Characterization of an offence

(1) Characterization by the territorial State: this position cannot be acceptable, since it would be inconsistent with the purpose of the institution, which is to protect those persecuted for political reasons.

(2) Characterization by mutual agreement between the State granting asylum id the territorial State: there are reservations regarding this position also, ince it seems unlikely that the parties will agree.

(3) Characterization by the State granting asylum: this is the solution ıvisaged, although not stated explicitly, in the Treaty of Montevideo of 1889, ıe Montevideo Convention of 1933 and the Caracas Convention of 1954.

Uruguay, in making its reservation regarding articles 2 and 20 of the Caracas ɔnvention, expressed the view that "all persons, regardless of sex, nationality, ɔinion or religion, enjoy the right to asylum" and that "unilateral ıaracterization offers the best guarantee for the implementation of the right to ıplomatic asylum". Consequently, Uruguay did not accept any proposal designed ɔ modify that procedure. It also made a reservation with regard to article 15.

:tradition and terrorism

The term "terrorism" was used for the first time at the 1931 Brussels nference for the Unification of Penal Law.

It was generally agreed that, for this type of offence, the principle of tradition of political offenders should apply, since the means employed ncelled out the presumed political motive which prompted them. Concern was pressed at the leniency of the treatment accorded internationally to political fences.

At its fourth session in 1959, the Inter-American Council of Jurists, in fining political offences, excluded "acts of brutality and vandalism and, in neral, violations of any kind that exceed the legal limits of attack and fense".

Article 8 of the Convention for the prevention and punishment of terrorism 937) confirms the proposition that acts of terrorism shall in no case be nsidered to be political offences.

In April 1970, the Permanent Council of OAS issued a statement unanimously ndemning terrorism. Uruguay took the initiative of placing on the agenda of e General Assembly the question of the political action to be taken against iminal activities of this type. It will be recalled that the General Assembly that organization charged the Inter-American Juridical Committee with preparing aft inter-American instruments on kidnapping, extortion and assaults against rsons, in cases in which these acts may have repercussions on international lations.

Generally speaking, it is considered that crimes of terrorism do not quality r the protection of diplomatic asylum, and refusal of asylum and the imposition restrictions on the transit of terrorists is viewed as a procedure for llective action against terrorism.

The Geneva Convention defined the expression "acts of terrorism" as "criminal
s directed against a State and intended or calculated to create a state of terror
the minds of particular persons, or a group of persons or the general public".

Terrorist activity has, of course, increased in recent times, and as a form
"propaganda by action" it constitutes a means of imposing by force certain
itical or social beliefs.

In the view of Jiménez de Azúa, terrorism does not constitute a criminal and
ial category as do political offences, which are distinguished by their
lutive character.

Terrorism would appear to be "atavistic", like the common crime. It is a
ne or series of crimes characterized by the state of alarm to which they
:omarily give rise owing to the destructive means normally employed by the
:rorist". The latter is not a homogeneous figure; he is characterized not by
:uistic motives, but by the highly destructive means employed and by the
:diate aim of causing public intimidation.

The terrorist, under international penal law, is extraditable. The methods
.oyed by this category of offenders totally undermine the altruistic character
:he political offence and are repugnant to morality and to well-defined
unitarian principles.

Irureta Goyena considers that "political offences shall not include those
)cious crimes which exceed all limits of defence and attack and which offend the
;cience of the civilized world ... it is clear that those who trample
:ilessly on human dignity cannot be allowed to escape punishment ... those who
ıit barbarous acts, since these represent one of the most degraded forms of
ion criminality ... leading to the conclusion that the terrorist, on account of
execrable conduct in using means capable of causing a disaster that may affect
)cent persons not involved in the political struggle, commits a crime included
ıin the category of offences under international law and should be deprived of
benefit of extradition".

Eduardo Jiménez de Aréchaga maintains that (1) terrorism deserved harsher
:lties than would apply to the common crimes constituting each individual act,
(2) there should be a prior general stipulation that the extradition of
'orists will in no case be refused.

Both measures are recommended because of the cruelty and cold-blooded
:rmination revealed by the organized and systematic commission of these criminal
. There are principles of universal morality that prevent the granting of the
.omatic protection deriving from asylum to persons who in actual fact are
ıitting crimes against humanity.

The penal legislation of Uruguay does not expressly mention terrorism. Act
10,279 concerning anti-national activities, which at the same time protects the
rests of the American States, indirectly refers to offences of this nature in

the chapter dealing with the punishment of subversive associations. It lays dow penalties in the case of associations which are contrary to the constitutional system or whose object is to encourage conflict or incite racial hatred.

As Dr. Francisco J. Mercora put it "the terrorist seeks to create domestic turmoil favourable to his plans through intimidation, panic and terror, sowing death, fire and devastation anywhere and against anyone in an underhand, sudden unpredictable and indiscriminate way. The individual who has violated all human standards of compassion, love and respect for his fellow-men and who, for fanatical or idealistic reasons, does not hesitate to loose a wave of violence i which disaster follows disaster must necessarily be regarded as dangerous, irrespective of the place of asylum. Such a person, given similar environmental circumstances of political, economic or class struggle, or even for personal motives, will commit the same acts again because, like the born criminal, he is ignorant of the dividing-line between right and wrong and the restraints which t rights of others and mutual coexistence impose on a member of a social community

Our country has upheld the views outlined above on many occasions. For exam our representatives in the Organization of American States supported the adoptio of the OAS Convention to prevent and punish the acts of terrorism taking the for of crimes against persons and related extortion that are of international significance, of 2 February 1971. In the United Nations, the Uruguayan delegati submitted to the General Assembly at its twenty-sixth session (1971) a draft Convention on the prevention and punishment of crimes against persons entitled t special protection under international law (A/C.6/L.822). This draft, with some changes introduced by the International Law Commission, was adopted by the Gener Assembly of the United Nations at its twenty-eighth session (1973).

Likewise, under the treaties of extradition and co-operation in criminal matters concluded with the Italian Republic and the United States of America in 1972, acts directed against the life, physical integrity or personal liberty of a Head of State, Head of Government, Minister-Secretary of State or any other person to whom the State owes special protection under international law are excluded from the category of offences to which political asylum, and hence any protection that the perpetrator may receive from the institution of territorial asylum, may apply.

Our conclusions with respect to offences affecting the safety of aviation are necessarily similar. Our country is at present in the process of acceding t the Convention on offences and certain other acts committed on board aircraft, signed at Tokyo in 1963, the Convention for the suppression of unlawful seizure of aircraft, signed at The Hague on 16 December 1970, and the Convention for the suppression of unlawful acts against the safety of civil aviation, signed at Montreal on 23 September 1971.

Conclusion

Although we consider it essential to include references to terrorism in fut conventions relating to asylum and extradition - because to do otherwise would b

to attempt to overlook a reality which affects us daily - at the same time, we feel that this should be done without establishing empty and dangerous definitions, thus leaving intact the principle that characterizing the nature of the offence should be a matter for the State granting asylum.

The institution of diplomatic asylum has been built into American international law with the assistance and active participation of Uruguay. It therefore commands our attention and respect, and we are resolved to collaborate in its further evolution and expansion elsewhere in the world.

The eminently humanitarian origins of this institution are not, however, consonant with the practices of the modern subversive movements that are now ravaging much of the world, including some of the most highly developed countries. Consequently, the Government of Uruguay is of the opinion that the protection of this noble institution could hardly be extended to those engaging in violence and crime on a scale which by now must be frankly termed supranational; for it can be seen that nowadays the agents of these subversive movements do not confine their actions to attempting to overthrow by violence the institutions of the country of which they are nationals but, rather, form part of a conspiracy that transcends established frontiers, aimed at changing by force the political structures of nations. This is not only at variance with the inherent purpose of the institution - which is designed to protect an individual whose action is of a specific character and is confined to his own country - but also takes on the dimensions of a supranational conspiracy to violate the principle of self-determination of peoples.

It should be added that even the traditional approach to the subject necessarily takes account of the fact that the subversive offender is normally a terrorist and that a subversive organization is, by definition, an organization that practises terrorism. When the added characteristic of supranationality is present, the Uruguayan Government believes that there are more than enough factors to justify the conclusion that these agents are not and should not be entitled to benefit from an institution that was created for entirely different ends and purposes.
